



POLICE DEPARTMENT

July 3, 2008

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Dino Tamayo
Tax Registry No. 905148
40 Precinct
Disciplinary Case No. 83232/07

The above-named member of the Department appeared before me on May 21, 2008, charged with the following:

1. Said Sergeant Dino Tamayo, assigned to the 40th Precinct, on or about and between March 7, 2006 and March 8, 2006, failed to comply with proper vouchering procedures in that Sergeant Tamayo instructed a subordinate officer to release a vehicle, and other personal property that was seized pursuant to an arrest for violations of the NYS Vehicle and Traffic Law, to a friend of the arrested individual without completing a Property Clerk's Invoice and Property Clerk's Motor Vehicle Invoice, and without proper log entries.

PG 218-01- INVOICING PROPERTY- GENERAL PROCEDURE
PG 218-48- VEHICLE SEIZURE AT TIME OF ARREST

2. Said Sergeant Dino Tamayo, assigned to the 40th Precinct, on or about and between March 7, 2006 and March 8, 2006, failed to comply with proper Department procedures for returning property in that he authorized and directed the release of personal property and an automobile without proper documentation in Department logs and indexes, without proper invoices, and released said vehicle to an individual whose license to drive Sergeant Tamayo knew was suspended or revoked.

PG 218-02 - RETURN OF PROPERTY/VEHICLES AT COMMAND
PG 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Sergeant Dino Tamayo, assigned to the 40th Precinct, on or about and between March 7, 2006 and March 8, 2006, failed and neglected to make and maintain activity log entries, as required.

PG 202-21, Page 1, Paragraph 17 – POLICE OFFICER

4. Said Sergeant Dino Tamayo, assigned to the 40th Precinct, on or about and between March 7, 2006 and March 8, 2006, authorized and directed the release of a vehicle to the custody of an individual whose license to drive was suspended or revoked resulting in that individual's arrest.

PG 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office and the Respondent was represented by Anthony DiFiore, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent having pleaded Guilty is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent is a fifteen-year member of the Department currently assigned to the 40th Precinct. He has been a sergeant since December of 1998 and is currently on the list for promotion to the rank of Lieutenant.

The Respondent testified that between March 7 and March 8, 2006, he supervised the arrest by one of his officers of an individual for a suspended license in violation of Vehicle and Traffic Law section 511. At that time he was the training supervisor of approximately "50 foot posts throughout the precinct" and he supervised approximately 12 arrests that day. Shortly after the 511 arrest, "the officer asked the Respondent "if they could have the vehicle released because the defendant asked if he could have the vehicle released to someone else, a friend of his, I believe." The Respondent authorized the release of the vehicle to the friend of the defendant, who appeared at the precinct. He

stated that he "instructed the officers to have memo book entries where the defendant would sign the release of the vehicle" to his friend and also have the "person receiving the vehicle signing it, accepting the vehicle...." He added that the owner of the vehicle "actually requested that this be done."

The Respondent stated that the name of the person he was releasing the vehicle to was a [REDACTED]. When [REDACTED] arrived at the precinct the Respondent instructed the officers to make sure that he produces a driver's license and that they check it to make sure that it was a valid license. The subsequent check of the man's license revealed that it was suspended. The Respondent then notified [REDACTED] that he was "suspended." The Respondent informed the Court that he believed that the man "knew it was suspended because I believe with a suspended license, it's not a defense that you don't know, you have to be notified prior to. Nonetheless ...just in case, I also told him again that he is suspended, it's property that the owner wants him to have so he can have it, that was my belief, but that he can't drive the vehicle; it's his responsibility to get a license operator to come, who ever he wants to come to move the vehicle, but he can't drive the vehicle. He can have it, he can't physically drive it, 'here are the keys, the owner wants you to have the property. Just so we understand you are not to drive.'" The Respondent stated that the individual understood what he was saying and accepted his direction.

[REDACTED] came with another individual, but the Respondent did not identify him, nor did he have any interaction with that individual. He stated that [REDACTED] signed the officer's memo book and the vehicle was turned over to him. The Respondent acknowledged that he had [REDACTED] sign the officer's memo book so that there would be

some type of documentation that showed that turning over the vehicle to him was actually authorized by the owner.

The Respondent informed the Court that subsequent to turning the vehicle over to [REDACTED] he spoke to his officers with regard to the conversation that he had with [REDACTED] about driving the vehicle. The Respondent "believing that there was a possibility that this individual may still operate this vehicle, even though he has been warned not to, as a precautionary measure I instructed officer's to observe him, and that if he did, in fact, operate the vehicle, that he was suspended and that they should stop him." He further explained that the officers "were just to wait outside, observe the vehicle and if he were to get into it and drive away, then they can make the stop."

The officers, according to the Respondent, saw the individual get into the car and drive the vehicle. They stopped him several blocks away, checked his license and when it was again confirmed that it was suspended they brought him back to the station house. When the Respondent was asked if it was his intention to purposely put [REDACTED] in a situation where he would likely be arrested he stated "absolutely not. I was hoping he wouldn't drive the car. He was told not to. But I thought it would be irresponsible of me to not make sure, knowing that there is a possibility that this guy is about to get into the car."

The Respondent acknowledged that he told [REDACTED] that he would have to make other arrangements to have some one else get the car. He explained "I gave him options, 'your wife, a friend, anyone who is a licensed operator could come drive the car. You just can't physically drive it. You can have it but you can't drive it.'" When asked again if it was his intention to make an extra arrest by giving [REDACTED] the car the Respondent stated that his officers had "made 99 arrests for that month. One more or less wouldn't

make a difference. I was under a lot of stress, supervising too many arrests.” He further explained that “in this case I thought it was a judgment call. In the thousands of judgment calls I had to make, I believe this is the first time where something like this occurred. I believe what I wanted to say was that my intent in this situation, I was to gain no benefit of it. I don’t believe I tried anything, what I believed at the time I was doing was the correct thing to do. This man came into the precinct, knowingly into a police facility knowing that he was suspended and thinking he was going to drive away in the vehicle. That was what he was told. He had knowledge of it and just if he didn’t, I told him once again, it was his decision to drive off in the vehicle.”

The Respondent acknowledged that the vehicle should have been vouchered and his explanation for not having the car vouchered was “I was the sole supervisor of, I believe, 28 officers at the time of this situation, all of them inexperienced, out on foot post. It was just a very hectic time and the reason for this is I had to make a lot of decisions, supervising all these guys, running from one spot to the other to the other to the other. It was basically a judgment call as to “let’s expedite this, move on, no problem, sign the car over, I have to get back out there.” He further explained that “the vehicle wasn’t needed as evidence. Should I have vouchered the vehicle? Yes, I have or had it voucher. I would like it to be taken into consideration the fact that I had nearly 30 officers under my supervision for that time, and it was to expedite things, I don’t know how to stress enough how difficult it was, I had nearly 50 or 60 guys every night out on foot post.” He further explained that his memo book entries were not up to par because even though he did make entries he was sure which entries were missing and that it was really because it was “a very busy time.... I don’t think it would have been effective to keep up with the demand to stop and make memo book entries every time.”

When asked by the court if he had vouchered the car would it have been sent to the automobile pound he replied that it would after a 24 hour period. He noted that the individual requested that the car be turned over to his friend to avoid having to go to Queens to pick up the vehicle.

On cross-examination, the Respondent acknowledged that the purpose of the Department's requirement to check the driver's license of an individual they are releasing a car to is to ensure that they are not releasing the car to an unlicensed operator. He further acknowledged that another purpose of the license check is the presumption that the person they are releasing the car to is going to be the person who is going to drive the car away. When asked that once he found out that the person's license was suspended why did he not go to the other person who was with [REDACTED] and check his license and release the car to him he stated "that could have been an option. Once again, it was a quick decision. I believe that since the owner of the vehicle wanted this individual to have the vehicle, he did not want - - I didn't know who this other person was, he didn't request the other person to have the vehicle. I decided to leave this person responsible to make a decision. It was his decision as to what he was going to do with this property. The owner of the property wanted him to have the property, not the person he came with." The Respondent did not notify the owner of the car that his friend had a suspended license. The Respondent stated that at that time he was not aware that he was not suppose to release a vehicle to someone who had a suspended or a revoked license. He now knows, however, that he should not have released the vehicle to a person with a suspended license.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y .2d 222 (1974).

The Respondent was appointed on August 30, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

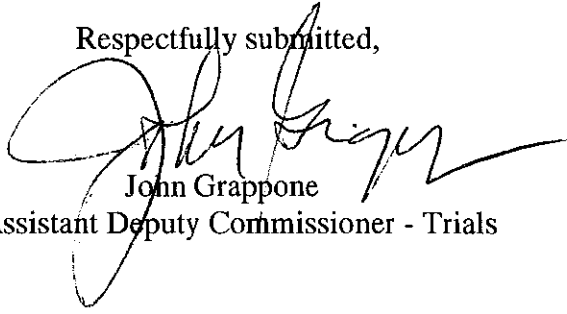
The Respondent pleaded Guilty to failing to comply with the Department's procedures for vouchering and returning property, failing to make and maintain activity log entries and to authorizing and directing the release of a vehicle to the custody of an individual whose license to drive was suspended.

The Respondent was forthright where he essentially admitted that he used poor judgment in giving the vehicle to a man with a suspended license. Moreover, to his credit, after he released the vehicle to [REDACTED], he had his officers observe him to insure that he would not drive the vehicle. Unfortunately for both [REDACTED] and the Respondent, once he decided to drive the vehicle with a suspended license he was immediately stopped by the officers and brought back to the station house.

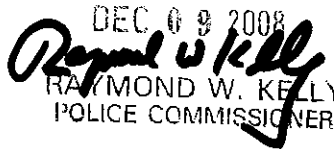
The Respondent undoubtedly exhibited poor judgment in releasing the vehicle to a man with a suspended license. While his decision was made during a time when he was in the midst of a very busy tour of duty, he nevertheless should not have released the vehicle to someone who was prohibited from driving.

Based on the foregoing, I recommend that the Respondent forfeit a penalty of 20 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner - Trials

APPROVED

DEC 09 2008

RAYMOND W. KELLY
POLICE COMMISSIONER